

AMENDED IN ASSEMBLY JUNE 18, 2015

AMENDED IN SENATE MARCH 23, 2015

SENATE BILL

No. 146

Introduced by Senator Galgiani
(Coauthor: Assembly Member Gatto)

January 28, 2015

An act to amend Sections 10159.5, 10159.6, and 10159.7 of the Business and Professions Code, relating to real estate licensees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 146, as amended, Galgiani. Real estate licensees: fictitious business names: team names.

Existing law provides for the licensure and regulation of real estate brokers and real estate salespersons by the Bureau of Real Estate headed by the Real Estate Commissioner. Existing law requires an applicant who desires to have his or her license issued under a fictitious business name to file with his or her application a certified copy of his or her fictitious business name statement. Existing law authorizes a responsible broker, as defined, by contract, to permit a salesperson to apply for a fictitious business name with the appropriate county, and to maintain ownership of a fictitious business name. Existing law defines a team name and provides, for purposes of the provisions described above, that a team name is not a fictitious business name if specified criteria apply.

This bill would provide that a team name is also not a fictitious business name for purposes of any other law or for purposes of filing a fictitious business name statement with an application as described above when the criteria apply. This bill would make technical and clarifying changes to the provisions described above.

Existing law requires advertising and solicitation materials using a fictitious business name or that contain a team name to display the responsible broker's identity, as provided. Existing law defines "responsible broker's identity" to mean the name under which the responsible broker operates or conducts business.

This bill would revise the definition of "responsible broker's identity" to mean a name *and the associated license identification number* under which the responsible broker ~~operates or is currently licensed and~~ conducts business in general ~~for or is a substantial division of~~ the real estate firm ~~as a whole~~ and that does not include a fictitious business name or a team name ~~owned or used solely by a salesperson or group of salespersons, and would provide that a responsible broker's identity may include divisions of the real estate firm registered with the Bureau of Real Estate under the broker,~~ name, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10159.5 of the Business and Professions
- 2 Code is amended to read:
- 3 10159.5. (a) (1) Every person applying for a license under
- 4 this chapter who desires to have the license issued under a fictitious
- 5 business name shall file with his or her application a certified copy
- 6 of his or her fictitious business name statement filed with the
- 7 county clerk pursuant to Chapter 5 (commencing with Section
- 8 17900) of Part 3 of Division 7.
- 9 (2) A responsible broker may, by contract, permit ~~the a~~
- 10 salesperson to do all of the following:
- 11 (A) File an application on behalf of a responsible broker with
- 12 a county clerk to obtain a fictitious business name.
- 13 (B) Deliver to the bureau an application, signed by the
- 14 responsible broker, requesting the bureau's approval to use a county
- 15 approved fictitious business name that shall be identified with the
- 16 responsible broker's license number.
- 17 (C) Pay for any fees associated with filing an application with
- 18 a county or the bureau to obtain or use a fictitious business name.

(D) Maintain ownership of a fictitious business name, as defined in paragraph (2) of subdivision (a) of Section 10159.7, that may be used subject to the control of the responsible broker.

(b) (1) A salesperson using a fictitious business name authorized by subdivision (a), shall use that name only as permitted by his or her responsible broker.

(2) This section does not change a real estate broker's duties under this division to supervise a salesperson.

(c) A person applying to a county for a fictitious business name pursuant to subdivision (a) may file his or her application in the county or counties where the fictitious business name will be used.

(d) Advertising and solicitation materials, including business cards, print or electronic media and "for sale" signage, using a fictitious business name obtained in accordance with *paragraph (2) of subdivision (a)* shall include the responsible broker's identity, as defined in paragraph (1) of subdivision (a) of Section 10159.7, in a manner equally as prominent as the fictitious business name.

(e) Notwithstanding subdivision (b) of Section 10140.6, advertising and solicitation materials, including print or electronic media and "for sale" signage, containing a fictitious business name obtained in accordance with *paragraph (2) of subdivision (a)* shall include the name and license number of the salesperson who is using the fictitious business name.

(f) Notwithstanding Section 10185, a violation of this section is not a misdemeanor.

SEC. 2. Section 10159.6 of the Business and Professions Code is amended to read:

10159.6. All of the following apply to use of a team name, as defined in paragraph (5) of subdivision (a) of Section 10159.7:

(a) Notwithstanding subdivision (b) of Section 10140.6, advertising and solicitation materials that contain a team name, including print or electronic media and "for sale" signage, shall ~~include the licensee's name and license number, and shall be displayed in a conspicuous manner.~~ *include, and display in a conspicuous and prominent manner, the team name and the name and license number of at least one of the licensed members of the team.*

(b) The responsible broker's identity, as defined in paragraph (1) of subdivision (a) of Section 10159.7, shall be displayed as

1 prominently and conspicuously as the team name in all advertising
2 and solicitation materials.

3 (c) The advertising and solicitation materials shall not contain
4 terms that imply the existence of a real estate entity independent
5 of the responsible broker.

6 (d) Notwithstanding Section 10185, a violation of this section
7 is not a misdemeanor.

8 SEC. 3. Section 10159.7 of the Business and Professions Code
9 is amended to read:

10 10159.7. (a) For the purposes of this article, the following
11 definitions shall apply:

12 (1) “Responsible broker’s identity” means a name *and the*
13 *associated license identification number* under which the
14 responsible broker ~~operates or conducts business in general for~~
15 ~~the real estate firm as a whole and that does not include a fictitious~~
16 ~~business name pursuant to subdivision (a) of Section 10159.5 or~~
17 ~~a team name pursuant to paragraph (5) of subdivision (a) of Section~~
18 ~~10159.7 owned or used solely by a salesperson or group of~~
19 ~~salespersons. Responsible broker’s identity may include divisions~~
20 ~~of the real estate firm registered with the bureau under the broker~~
21 ~~that are used for specialty or areas within the firm that are available~~
22 ~~to all salespersons within that specialty area. is currently licensed~~
23 ~~by the bureau and conducts business in general or is a substantial~~
24 ~~division of the real estate firm. Responsible broker’s identity does~~
25 ~~not include a fictitious business name obtained pursuant to~~
26 ~~paragraph (2) of subdivision (a) of Section 10159.5 or the use of~~
27 ~~a team name pursuant to Section 10159.6.~~

28 (2) “Fictitious business name” means a professional identity or
29 brand name under which activity requiring a real estate license is
30 conducted and the use of which is subject to approval by the bureau
31 pursuant to Section 10159.5.

32 (3) “Ownership of a fictitious business name” means the right
33 to use, renew, and control the use of a fictitious business name
34 obtained in accordance with Section 10159.5.

35 (4) “Responsible broker” means the broker responsible for the
36 exercise of control and supervision of salespersons under Section
37 10159.2, or a licensee subject to discipline under subdivision (h)
38 of Section 10177 for failure to supervise activity requiring a real
39 estate license. The supervision of a salesperson required under this

1 part or any other law is limited to regulatory compliance and
2 consumer protection.

3 (5) “Team name” means a professional identity or brand name
4 used by a salesperson, and one or more other real estate licensees,
5 for the provision of real estate licensed services. Notwithstanding
6 any other law, the use of a team name does not require that a
7 separate license be issued for that name pursuant to Section
8 10159.5. A team name does not constitute a fictitious business
9 name for purposes of this part or any other law or for purposes of
10 filing a fictitious business name statement with an application as
11 required by subdivision (a) of Section 10159.5 if all of the
12 following apply:

13 (A) The name is used by two or more real estate licensees who
14 work together to provide licensed real estate services, or who
15 represent themselves to the public as being a part of a team, group,
16 or association to provide those services.

17 (B) The name includes the surname of at least one of the licensee
18 members of the team, group, or association in conjunction with
19 the term “associates,” “group,” or “team.”

20 (C) The name does not include any term or terms, such as “real
21 estate broker,” “real estate brokerage,” “broker,” or “brokerage”
22 or any other term that would lead a member of the public to believe
23 that the team is offering real estate brokerage services, that imply
24 or suggest the existence of a real estate entity independent of a
25 responsible broker.

26 (b) Nothing in this section changes a real estate broker’s duties
27 under this division to supervise a salesperson.

28 SEC. 4. This act is an urgency statute necessary for the
29 immediate preservation of the public peace, health, or safety within
30 the meaning of Article IV of the Constitution and shall go into
31 immediate effect. The facts constituting the necessity are:

32 In order to ensure that the law regarding “team names” is applied
33 consistently at the state and local level and that a “team name”
34 does not constitute a fictitious business name for purposes of any
35 law, it is necessary that this act take effect immediately.